

Vasquez, Oscar

BENEFICIARIES

Dependent (RCW 51.08.050)

Low-income family members who receive cash from a worker to be used for their medical expenses can be considered dependents of the workers for purposes of RCW 51.32.050(5). ...*In re Oscar Vasquez*, BIA Dec., 99 19523 (2001) [dissent]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: OSCAR E. VASQUEZ, DEC'D**) **DOCKET NO. 99 19523**
2)
3 **CLAIM NO. P-706766**) **DECISION AND ORDER**
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5 **APPEARANCES:**

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7 Beneficiaries-Petitioners, Elfego Estrada and Silvia Vasquez, by
8 Calbom & Schwab, P.S.C., per
9 G. Joe Schwab and David Lybbert

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11 Employer, Stemilt Management, Inc.,
12 None

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14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 David W. Coe, Assistant
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19 The beneficiaries-petitioners, Elfego Estrada and Silvia Vasquez, filed an appeal with the
20 Board of Industrial Insurance Appeals on September 13, 1999, from an order of the Department of
21 Labor and Industries dated August 23, 1999. The order rejected the application for pension
22 payments to Elfego Estrada and Silvia Vasquez for the reason that they failed to submit proof or
23 documentation that they were actually and necessarily dependent in whole, or in part, for their
24 support from the earnings of the worker at the time of his fatal accident. **REVERSED AND**
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30 **REMANDED.**
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33 **DECISION**
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35 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
36 and decision on a timely Petition for Review filed by the beneficiaries/petitioners to a Proposed
37 Decision and Order issued on November 13, 2000, in which the order of the Department dated
38 August 23, 1999, was affirmed.
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1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
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3 no prejudicial error was committed and the rulings are affirmed. We agree with our hearing judge
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5 that the testimony of Erasmo Gamboa, Ph.D., is not necessary to decide the facts of this appeal.
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7 Dr. Gamboa certainly has in-depth knowledge about Mexican citizens who come to the United
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9 States to work and their typical, familial relationships. However, the question before us concerns
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11 the specific facts of the relationship between the deceased and his parents. Expert evidence is not
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13 necessary to assist us in that determination.

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15 From the terms of the August 23, 1999 Department order, it appears that the Department
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17 has determined that Oscar Vasquez was a single, unmarried worker at the time of his death while in
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19 the course of his employment on April 2, 1998. The order also describes Elfego Estrada and
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21 Silvia Vasquez as the parents of the deceased. The question on appeal is whether the parents
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23 should receive benefits as a result of the death of their son under the Washington State Industrial
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25 Insurance Act.

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27 When a worker covered by the Industrial Insurance Act dies in the course of his
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29 employment, death benefits may be owing to others under RCW 51.32.050. Subsection 5 of that
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31 section states, in part,

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33 If the worker leaves no surviving spouse or child, but leaves a
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35 dependent or dependents, a monthly payment shall be made to each
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37 dependent equal to fifty percent of the average monthly support actually
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39 received by such dependent from the worker during the twelve months
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41 next preceding the occurrence of the injury, . . . The payment to any
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43 dependent shall cease if and when, under the same circumstances, the
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45 necessity creating the dependency would have ceased if the injury had
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47 not happened.

42 Thus, if the parents of Oscar Vasquez were found dependent on him, then each would receive
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44 50 percent of the average support each actually received from him from April 2, 1997 to April 2,
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46 1998. The Act defines "dependent" at RCW 51.08.050 as follows,
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1 [A]ny of the following named relatives of a worker whose death results
2 from any injury and who leaves surviving no widow, widower, or child,
3 viz: Father, mother, grandfather, grandmother, stepfather, stepmother,
4 grandson, granddaughter, brother, sister, half-sister, half-brother, niece,
5 nephew, who at the time of the accident are actually and necessarily
6 dependent in whole or in part for their support upon the earnings of the
7 worker.
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9 There is little precedent to assist us in applying this statutory language to the facts of this appeal.

10 Our Supreme Court has addressed similar facts in *McIntire v. Department of Labor & Indus.*,
11 125 Wash. 370 (1923). In that case, the parents of a deceased, 24-year-old son sought to be
12 found dependents of him at the time of his death. The son worked in a logging camp near his
13 parents farm, and he turned over nearly all his earnings to his parents for the support of his family.
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15 The deceased worker and his brother did much of the farm work, and their father was in poor
16 physical condition. The court commented that the family could have supported life without the son's
17 contribution, "but it is pretty clearly certain that the contributions from the son through his work were
18 looked to, depended and relied on in substantial part by the family for means of reasonable
19 support." *McIntire*, at 372. The court further described a test for dependency with reference to
20 similar holdings in other jurisdictions; "Manifestly, with the knowledge and consent of the son, the
21 respondents had depended and relied to a substantial extent upon that support for the ordinary
22 necessities of life for persons in their station socially and financially." *McIntire*, at 372-373. With
23 this background, we turn to the essential facts of this appeal.
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37 At the time of his drowning, Oscar Vasquez was 17 years old. Prior to traveling to Mattawa,
38 Washington to work picking apples in September 1997, Oscar Vasquez had resided with his
39 parents, and three siblings in rural Mexico. He and his twin brother were the eldest children.
40 Elfego Estrada explained that in 1997 there was a drought where they lived in Mexico, and there
41 was no corn or work. Elfego Estrada was apparently already in Washington when Oscar Vasquez
42 decided to go to the United States for work. When Oscar Vasquez came to Mattawa, he resided
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1 with his father, his uncle, Rufino Estrada, and two others in a rented trailer. Elfego Estrada testified
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3 that prior to his return to his family in October 1997, he and his son, Oscar Vasquez, sent \$150
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5 each to their family in Mexico. During that same period, Oscar Vasquez purchased a typewriter to
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7 assist his brother in his studies, which his father took to Mexico. After Elfego Estrada returned to
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9 Mexico, Oscar Vasquez sent money to his family three times. The first remittance was \$300,
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11 apparently sent by wire, and the second and third were by cash carried by individuals returning to
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13 Mexico in the amounts of \$200 and \$300. Rufino Estrada stated that he had assisted his nephew
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15 to send money home by wire on two occasions. From this testimony, it appears that Oscar
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17 Vasquez sent his family in Mexico \$950 from his work at Mattawa from September 1997 until his
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19 death in April 1998. Additionally, prior to coming to Mattawa, Oscar Vasquez assisted his family on
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21 their small farm by assisting with raising corn, raising goats, and collecting firewood.

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23 Elfego Estrada stated that he and his wife depended on the money sent to them by their
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25 son. He also testified that after the death of Oscar Vasquez he had money for food and clothing for
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27 his wife and children, but that he did not have money for his wife's health problems. It also appears
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29 that the money that was sent by Oscar Vasquez was used by his parents to send their other
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31 children to school. Elfego Estrada further explained that he usually earns about \$1,000 per month
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33 in the United States and that he sends about one-half home to his wife and children.

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35 From this record, it seems that Oscar Vasquez was not emancipated from his family and
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37 was a contributing member of the family at the time of his death at age 17. His father attempted to
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39 support his family in Mexico while he worked in the United States with monthly cash contributions of
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41 about \$500. During the eight months he resided in Mattawa, Oscar Vasquez sent about \$950 and
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43 a typewriter to his family. This is not an insignificant sum, relative to the family's apparent limited
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45 cash income and standard of living. Elfego Estrada candidly testified that after his son's death he
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47 was able to provide food and clothing, but not money to cure his wife's health problems. Under

1 these facts, it is not difficult for us to conclude that his parents depended and relied upon their son's
2 contributions, in part, for the ordinary necessities of their life in rural Mexico. Our Supreme Court
3 has recently held that health insurance premiums are of such a critical nature as to require their
4 inclusion in the calculation of the wage and time loss compensation rates for injured workers.
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6 *Cockle v. Department of Labor & Indus.*, 142 Wn.2d 801 (2001). Surely, the cash that a poor
7 Mexican family receives to allow access to medical treatment is of the same vital nature. The
8 parents of Oscar Vasquez depended, in part, on his financial support in the months immediately
9 prior to his death. The financial remittances that their son sent them cannot be characterized as
10 mere gifts since the money was used for the ordinary necessities of their basic lifestyle. As a result,
11 we distinguish this situation from that of *In re Owen Raines, Dec'd*, BIIA Dec., 08,542 (1957). In
12 that case, the Board did not find a mother of a deceased 23-year-old to have been dependent on
13 him. He had only contributed about \$130 during a six-month period before his death, and before
14 that had exchanged money for what appeared to be room, board and laundry.

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16 In conclusion, Elfego Estrada and Silvia Vasquez have proven that they were partially
17 dependent on their son, Oscar Vasquez, at the time of his death. He died unmarried and without
18 children. As a result, Elfego Estrada and Silvia Vasquez qualify for dependent benefits under
19 RCW 51.32.050(5). The Department must determine the average monthly support they received
20 for the twelve months preceding the death of Oscar Vasquez on April 2, 1998. In that regard, we
21 note that the un rebutted evidence in this appeal is that he sent his parents \$950 in United States
22 dollars during that twelve-month period.

23 **FINDINGS OF FACT**

- 24 1. On April 8, 1998, Elfego Estrada and Silvia Vasquez filed an application
25 for benefits due to the death of their son, Oscar E. Vasquez.
26 Oscar Vasquez' death occurred on April 2, 1998, during the course of
27 his employment with Stemilt Management, Inc. The Department
28 allowed the claim for burial benefits on April 14, 1998. On August 23,
29 1999, the Department rejected the claim for pension benefits by

1 Elfego Estrada and Silvia Vasquez. The order stated that the parents
2 had failed to submit proof or documentation that they were actually and
3 necessarily dependent, in whole or in part, for their support on the
4 earnings of the worker at the time of his fatal accident. Elfego Estrada
5 and Silvia Vasquez filed a Notice of Appeal with the Board of Industrial
6 Insurance Appeals on September 13, 1999. The Board granted the
7 appeal on October 12, 1999, and assigned Docket No. 99 19523.
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- 9 2. Oscar Vasquez was the son of Elfego Estrada and Silvia Vasquez. The
10 family permanently resided in the state of Santa Cruz in Mexico. On
11 April 2, 1998, Oscar Vasquez died in an industrial accident in the state
12 of Washington while in the course of his employment as a farmworker
13 with Stemilt Management, Inc. He was 17 years old at the time of his
14 death, and he did not leave a surviving spouse or child.
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- 16 3. At the time of his death on April 2, 1998, Oscar Vasquez had been
17 temporarily residing in Mattawa, Washington since September 1997.
18 From April 2, 1997 to April 2, 1998, Oscar Vasquez provided his mother
19 and father the total sum of \$950 in United States dollars for their
20 support.
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- 22 4. During the period of September 1997 to April 2, 1998, Elfego Estrada
23 and Silvia Vasquez had financial difficulty providing for all the
24 necessities of life due to a drought that affected their ability to raise corn
25 and goats, and limited job opportunities in Santa Cruz, Mexico. Elfego
26 Estrada and Silvia Vasquez depended, in part, upon the \$950 that was
27 provided to them by Oscar Vasquez for the necessities of life such as
28 health care, food and clothing during the period of September 1997 to
29 April 2, 1998.
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31 **CONCLUSIONS OF LAW**

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- 33 1. The Board of Industrial Insurance Appeals has jurisdiction over the
34 parties and subject matter of this appeal.
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- 36 2. At the time of the death of their son, Oscar Vasquez, in an industrial
37 accident on April 2, 1998, Elfego Estrada and Silvia Vasquez were
38 dependent, in part, upon his earnings within the meaning of
39 RCW 51.08.050.
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- 41 3. At the time of the death of their son, Oscar Vasquez, in an industrial
42 accident on April 2, 1998, Elfego Estrada and Silvia Vasquez were
43 eligible for death benefits under RCW 51.32.050(5).
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- 45 4. The order of the Department of Labor and Industries dated August 23,
46 1999, is incorrect and is reversed. This claim is remanded to the
47 Department to issue an order allowing the claim made for benefits by

1 Elfego Estrada and Silvia Vasquez due to the death of their son, Oscar
2 Vasquez, and setting the amount and duration of those benefits under
3 RCW 51.32.050(5).
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5 It is **ORDERED**.

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7 Dated this 14th day of March, 2001.
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9 BOARD OF INDUSTRIAL INSURANCE APPEALS

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13 /s/ _____
14 THOMAS E. EGAN Chairperson

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18 /s/ _____
19 FRANK E. FENNERTY, JR. Member

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22 **DISSENT**

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24 I disagree with the majority's decision that the parents of Oscar Vasquez proved their
25 dependence upon the earnings of their son at the time of his unfortunate, accidental death. The
26 Industrial Insurance Act is a statutory scheme of compensation for the injury and death of workers,
27 and the Board must follow the laws as written when deciding individual appeals. The Washington
28 Legislature has not created an automatic right to support benefits for relatives of a worker killed in
29 the course of his or her employment, other than for a spouse or child. Under RCW 51.08.050,
30 parents and other named relatives seeking support benefits have the burden of proving that at the
31 time of the accident, they were actually and necessarily dependent, for their support, upon the
32 earnings of the deceased worker.
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42 The majority goes too far in its interpretation of the self-serving evidence of the
43 petitioners. The petitioners did not submit documentary evidence of the fund transfers that should
44 have been available such as electronic wire records, payroll records of the deceased, or financial
45 records in Mexico. Furthermore, the only relevant evidence of the dependency of the petitioners
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1 comes from Elfego Estrada. As the hearings judge pointed out in his proposed decision,
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3 Mr. Estrada did not even know that his son had decided to go to the United States to work in 1997.
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5 It is hard to conclude that he would have relied upon his son's earnings for his support and that of
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7 his wife when he was not aware that funds would be sent. As we noted in an earlier decision,
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9 "courts have generally held that occasional gifts or contributions not relied on for support do not
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11 establish dependency." *In re Owen Raines, Dec'd*, BIIA Dec., 08,542 (1957), at 6 (citations
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13 omitted). Significantly, Mr. Estrada admitted that even without the money that his son may have
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15 continued to send to the family, he had the financial ability to provide food and clothing. The
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17 majority reads too much into his statements that he did not have money to cure his wife of some
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19 type of physical problem. There was no evidence from Silvia Vasquez concerning her health,
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21 dependence upon the earnings of Oscar Vasquez, or even the receipt of money from him.

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23 I sympathize with Elfego Estrada and Silvia Vasquez in the loss of their son. However, the
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25 law enacted by the Washington Legislature must be applied objectively. I would affirm the
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27 Department's decision in this matter and deny the petitioners' claim for dependency benefits.

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29 Dated this 14th day of March, 2001.

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31 BOARD OF INDUSTRIAL INSURANCE APPEALS
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35 /s/ _____
36 JUDITH E. SCHURKE Member
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